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GRANTING CONGRESSIONAL CONSENT TO THE APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMPACT

FEBRUARY 16 (legislative day, FEBRUARY 15), 1988.—Ordered to be printed

Mr. BYRD (for Mr. BIDEN), from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 3025]

The Committee on the Judiciary, to which was referred the bill (H.R. 3025) to grant congressional consent to the Appalachian States Low-Level Radioactive Waste Compact, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE

H.R. 3025 grants congressional consent to the Appalachian States Low-Level Radioactive Waste Compact. Delaware, Maryland, Pennsylvania, and West Virginia are members of the compact. Congressional consent to the compact is necessary to allow the member states to limit the wastes that can be disposed in the compact's low-level waste site to only those wastes generated in the member states. Low-level wastes from states outside the compact can be

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blocked beginning January 1, 1993 if the compact is granted congressional consent.

The Appalachian Compact, like other low-level radioactive waste regional compacts approved by Congress, reflects the intent of Congress to delegate to the states more responsibility for the safe disposal of those wastes in accordance with the terms set forth in the Low-Level Radioactive Waste Policy Act of 1980 and the Low-Level Radioactive Waste Policy Amendments Act of 1985.

II. LEGISLATIVE HISTORY

In the 99th Congress, bills to grant congressional consent to the Appalachian Compact were introduced in the Senate and the House of Representatives. Senator William Roth (DE) introduced S. 2679. Representative Austin Murphy (PA) introduced H.R. 5338. However, no action was taken on either bill during the 99th Congress.

In the 100th Congress, bills were again introduced to grant congressional consent to the Appalachian Compact. H.R. 3025 passed the House, was received by the Senate and referred to the Committee on the Judiciary on October 16, 1987. A companion bill. S. 1551, was introduced and referred to the Committee on the Judiciary on July 24, 1987. The committee favorably reported H.R. 3025 for Senate action by voice vote on December 3, 1987.

III. DISCUSSION

Low-level radioactive waste is distinguished from high-level radioactive waste by the level of radioactivity emitted. Low-level wastes do not produce the heat that high-level wastes do and decay to safe levels more rapidly, often in a matter of weeks.

Figures for 1986 show utilities to be the largest producers of low-level wastes, accounting for over 29,000 cubic meters of wastes. Examples of utility wastes that are commonly disposed in low-level waste sites include contaminated protective clothing and contaminated rags. These wastes do not include spent fuel rods, which are classified as high-level wastes and are expected to be disposed of in a separate, federally-approved, deep geological repository.

Industrial sources contributed the next largest amount of wastes, nearly 18,500 cubic meters. Medical waste from hospitals and material from university research are relatively small contributors, totalling only 1,300 cubic meters between them.

Presently, three sites handle the Nation's commercial and nondefense related low-level radioactive waste—Barnwell, South Carolina receives about 58 percent of the total waste shipped to the sites; Hanford, Washington receives 37 percent; and Beatty, Nevada accounts for the remaining 5 percent. In response to strong objections from the host states to continued operation of the disposal sites, Congress passed the Low-Level Radioactive Waste Policy Act of 1980.

The act allowed and encouraged states to establish regional compacts for the disposal of low-level waste generated in that region. The three operating sites were allowed to refuse out-of-region wastes beginning in 1986. Congressional consent to the regional compacts is required for them to be constitutionally able to ban

shipments of low-level wastes from states that are not members of the compact.

The act was amended in 1985 when it became evident that many states would be unable to meet the 1986 deadline for development of regional disposal sites. The 1985 amendments pushed back the cutoff date for the Barnwell, Hanford and Beatty sites to 1993, but established several "milestones" to measure state progress toward meeting the new deadline. Penalty surcharges on low-level waste shipments and possible denial of access to the sites were also established to insure state compliance with the new schedule.

Congressional consent to seven regional compacts, covering 37 states, was included as part of the 1985 amendments. The Appalachian States Compact is the first to request congressional consent since passage of the 1985 amendments.

Pennsylvania initiated the idea of a regional compact with the states of Delaware, Maryland, and West Virginia prior to the passage of the 1985 amendments, but the details had not been developed to the point that Congress could grant consent to the compact, or even consider this step as part of the 1985 amendments.

The legislatures of each state, with the exception of West Virginia, approved the compact by the middle of 1986. West Virginia enacted compact language identical to the other compact members in March 1987.

Among its provisions, the Appalachian Compact establishes the responsibilities, powers and duties of an interstate commission to oversee the development and operation of the regional disposal site. It also establishes schedules for allocating the costs of the commission until the disposal site opens and once the site is operating.

Under the terms of the compact, Pennsylvania will be the first host of the low-level radioactive waste disposal site. Pennsylvania is by far the largest generator of low-level waste among Appalachian Compact states. In 1986, Pennsylvania generated over 5,300 cubic meters of low-level waste. In contrast, Delaware generated 31 cubic feet, Maryland 424 cubic feet, and West Virginia none.

Pennsylvania will remain the host of the regional disposal site until another member state generates 25 percent or more of Pennsylvania's volume or total curie count of low-level waste based on a comparison of averages for those categories over a 3-year period. Should a member state exceed this threshold, it must begin the process of developing a regional disposal facility that will operate for 30 years.

During consideration of H.R. 3025 by the Judiciary Committee, two issues were raised.

First, with regard to the membership of the Appalachian Compact, the committee noted that two members of this compact—Maryland and Delaware—were previously given consent to enter into the Northeast Compact. With this change in expected membership as consented to by Congress, a question arose as to whether congressional consent to the Appalachian Compact would relieve those states of any legal obligation they may have incurred under the Northeast Compact. The committee took the position that granting consent to H.R. 3025 would not relieve the states of any legal obligations incurred under the previous compact, if in fact any were incurred.

Second, the committee noted that the Department of Justice in a letter dated November 4, 1987, raised concerns with regard to the constitutionality of a provision in the compact. Specifically, the Department was concerned that a provision in the compact would be construed to give the compact commission the authority to enforce Federal law. Since compact commissioners are not appointed by the President, Justice believed such a provision may violate the Appointments Clause of the Constitution. The committee concluded that the issue needed further study. Therefore, rather than delay action on H.R. 3025, the committee agreed to report the compact with an agreement that the issue would be considered further before action was taken on the Senate floor.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, November 4, 1987.

Hon. JOSEPH R. BIDEN, Jr.,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter is to offer the views of the Department of Justice on H.R. 3025, a bill to grant the consent of the Congress to the Appalachian States Low-Level Radioactive Waste Compact (Compact), as passed by the House of Representatives on October 13, 1987. Whether this bill should be enacted or not involves questions of policy as to which the Department of Justice defers to other appropriate agencies. The Department does believe, however, that this bill contains one serious constitutional defect that should be eliminated.

Article I, Section A of the Compact establishes the Appalachian States Low-Level Radioactive Waste Commission (Commission) as an "agency and instrumentality of the governments" of the signatory states. The Compact further provides that the members of the Commission are to be "appointed according to the laws" of the signatory states. This method of appointing commissioners would not raise a constitutional problem if the Commission simply enforced state law. The Compact provides, however, that the Commission shall impose fines or other penalties, on low-level waste brokers or generators who violate "applicable state and Federal regulations." Enforcing federal regulations clearly constitutes the exercise of "significant authority pursuant to the laws of the United States." *Buckley* v. *Valeo,* 424 U.S. 1, 126 (1976). Therefore, under *Buckley, supra,* if the Commission members are to enforce federal regulations they are "Officers of the United States" and must be appointed in the manner prescribed by Article II, section 2, clause 2 of the Constitution.[1]

The Department believes that the best way of averting the Appointments Clause problem is for Congress to condition its consent to the Compact upon an understanding that the Commission will

[1] Article II, section 2, clause 2 of the Constitution provides that the President shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

not enforce federal law. Section 3 of H.R. 3025, which is entitled "Conditions of Consent to Compact," should be amended to add a new subsection (4). Subsection (4) should provide: "(4) is granted subject to the condition that the Commission not enforce any federal statutes or regulations by imposing sanctions or otherwise." This amendment would not prevent the Commission from fulfilling its other duties, and it would remain free to report violations of federal law to the appropriate federal authorities.

The Department also would note that the Compact is less than clear on another point. The Commission is authorized to promulgate regulations to promote a reasonable reduction in the generation of low-level radioactive waste in the region (Art. I(B)(a)) and to govern emergencies (Art. I(B)(o)). The Compact, however, does not grant the Commission authority to enforce these regulations. One must presume that the signatory states plan to enact independently the regulations promulgated by the Commission and to enforce these regulations through the relevant state agencies. The Compact should address explicitly who has the responsibility to enforce the regulations promulgated by the Commission. The ambiguity of the Compact on this point may not justify Congress in withholding consent, but the Department believes that future compacts should avoid such drafting problems.

The Office of Management and Budget has advised us that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

JOHN R. BOLTON,
Assistant Attorney General.

IV. TEXT OF H.R. 3025

[H.R. 3025, 100th Cong., 1st Sess.]

AN ACT To GRANT THE CONSENT OF THE CONGRESS TO THE APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMPACT

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Appalachian States Low-Level Radioactive Waste Compact Consent Act".

SEC. 2. CONGRESSIONAL FINDING.

The Congress finds that the compact set forth in section 5 is in furtherance of the Low-Level Radioactive Waste Policy Act.

SEC. 3. CONDITIONS OF CONSENT TO COMPACT.

The consent of the Congress to the compact set forth in section 5—

(1) shall become effective on the date of the enactment of this Act,

(2) is granted subject to the provisions of the Low-Level Radioactive Waste Policy Act, and

(3) is granted only for so long as the Appalachian States Low-Level Radioactive Waste Commission, advisory commit-

tees, and regional boards established in the compact comply with all the provisions of such Act.

SEC. 4. CONGRESSIONAL REVIEW.

The Congress may alter, amend, or repeal this Act with respect to the compact set forth in section 5 after the expiration of the 10-year period following the date of the enactment of this Act, and at such intervals thereafter as may be provided for in such compact.

SEC. 5. APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMPACT.

In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021d(A)(2)), the consent of Congress is given to the States of Pennsylvania, West Virginia, and any eligible States as defined in Article 5(A) of the Appalachian States Low-Level Radioactive Waste Compact to enter into such compact. Such compact is substantially as follows:

"APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMPACT

"Preamble

"Whereas, The United States Congress, by enacting the Low-Level Radioactive Waste Policy Act (42 U.S.C. §§ 2021b–2021d) has encouraged the use of interstate compacts to provide for the establishment and operation of facilities for regional management of low-level radioactive waste;

"Whereas, Under section 4(a)(1)(A) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. § 2021d(a)(1)(A)), each state is responsible for providing for the capacity for disposal of low-level radioactive waste generated within its borders;

"Whereas, To promote the health, safety and welfare of residents within, the Commonwealth of Pennsylvania and other eligible states as defined in Article 5(A) of this compact shall enter into a compact for the regional management and disposal of low-level radioactive waste.

"Now, therefore, the Commonwealth of Pennsylvania and the state of West Virginia and other eligible states hereby agree to enter into the Appalachian States Low-Level Radioactive Waste Compact.

"Article I

"Definitions

"As used in this compact, unless the context clearly indicates otherwise:

"(a) 'Broker' means any intermediate person who handles, treats, processes, stores, packages, ships or otherwise has responsibility for or possesses low-level waste obtained from a generator.

"(b) 'Carrier' means a person who transports low-level waste to a regional facility.

"(c) 'Commission' means the Appalachian States Low-Level Radioactive Waste Commission.

"(d) 'Disposal' means the isolation of low-level waste from the biosphere.

"(e) 'Facility' means any real or personal property within the region, and improvements thereof or thereon, and any and all plant structures, machinery and equipment acquired, constructed, operated or maintained for the management or disposal of low-level waste.

"(f) 'Generate' means to produce low-level waste requiring disposal.

"(g) 'Generator' means a person whose activity results in the production of low-level waste requiring disposal.

"(h) 'Hazardous life' means the time required for radioactive materials to decay to safe levels, as defined by the time period for the concentration of radioactive materials within a given container or package to decay to maximum permissible concentrations as defined by Federal law or by standards to be set by a host state, whichever is more restrictive.

"(i) 'Host state' means Pennsylvania or other party state so designated by the Commission in accordance with Article 3 of this compact.

"(j) 'Institutional control period' means the time of the continued observation, monitoring and care of the regional facility following transfer of control from the operator to the custodial agency.

"(k) 'Low-level waste' means radioactive waste that:

"(1) is neither high-level waste or transuranic waste, nor spent nuclear fuel, nor by-product material as defined in Section 11(e)(2) of the Atomic Energy Act of 1954 as amended; and

"(2) is classified by the Federal Government as low-level waste, consistent with existing law; but does not include waste generated as a result of atomic energy defense activities of the Federal Government, as defined in Public Law 96-573, or Federal research and development activities.

"(l) 'Management' means the reduction, collection, consolidation, storage, packaging or treatment of low-level waste.

"(m) 'Operator' means a person who operates a regional facility.

"(n) 'Party state' means any state that has become a party in accordance with Article 5 of this compact.

"(o) 'Person' means an individual, corporation, partnership or other legal entity, whether public or private.

"(p) 'Region' means the combined geographical area within the boundaries of the party states.

"(q) 'Regional facility' means a facility within any party state which has been approved by the Commission for the disposal of low-level waste.

"(r) 'Shallow land burial' means the disposal of low-level radioactive waste directly in subsurface trenches without additional confinement in engineered structures or by proper packaging in containers as determined by the law of the host state.

"(s) 'Transuranic waste' means low-level waste containing radionuclides with an atomic number greater than 92 which are excluded from shallow-land burial by the Federal Government.

"(A) Creation and Organization.

"(1) Creation—There is hereby created the Appalachian States Low-Level Radioactive Waste Commission. The Commission is hereby created as a body corporate and politic, with succession for the duration of this compact, as an agency and instrumentality of

the governments of the respective signatory parties, but separate and distinct from the respective signatory party states. The Commission shall have central offices located in Pennsylvania.

"(2) Commission Membership—The Commission shall consist of two voting members from each party state to be appointed according to the laws of each party state and two additional voting members from each host state to be appointed according to the laws of each host state. Upon selection of the site of the regional facility, an additional voting member shall be appointed to the Commission who shall be a resident of the county or municipality where the facility is to be located. The appointing authority of each party state shall notify the Commission in writing of the identities of the members and of any alternates. An alternate may vote and act in the member's absence. No member shall have a financial interest in any industry which generates low-level radioactive waste, any low-level radioactive waste regional facility or any related industry for the duration of the member's term. No more than one-half the members and alternates from any party state shall have been employed by or be employed by a low-level waste generator or related industry upon appointment to or during their tenure of office; provided, that no member shall have been employed by or be employed by a regional facility operator. No member or alternate from any party state shall accept employment from any regional facility operator or brokers for at least three years after leaving office.

"(3) Compensation—Members of the Commission and alternates shall serve without compensation from the Commission but may be reimbursed for necessary expenses incurred in and incident to the performance of their duties.

"(4) Voting Power—Each Commission member is entitled to one vote. Unless otherwise provided in this compact, affirmative votes by a majority of a host state's members are necessary for the Commission to take any action related to the regional facility and the disposal and management of low-level waste within that host state.

"(5) Organization and Procedure—

"(a) The Commission shall provide for its own organization and procedures and shall adopt by-laws not inconsistent with this compact and any rules and regulations necessary to implement this compact. It shall meet at least once a year in the county selected to host a regional facility and shall elect a chairman and vice chairman from among its members. In the absence of the chairman, the vice chairman shall serve.

"(b) All meetings of the Commission shall be open to the public with at least 14 days' advance notice, except that the chairman may convene an emergency meeting with less advance notice. Each municipality and county selected to host a regional facility shall be specifically notified in advance of all Commission meetings. All meetings of the Commission shall be conducted in a manner that substantially conforms to the Administrative Procedure Act (5 U.S.C. Ch. 5, Subch. II, and Ch. 7). The Commission may, by a two-thirds vote, including approval of a majority of each host state's Commission members, hold an Executive Session closed to the public for the purpose of: considering or discussing legally privileged or proprietary information; to consider dismissal, disciplining

of or hearing complaints or charges brought against an employee or other public agent unless such person requests such public hearing; or to consult with its attorney regarding information or strategy in connection with specific litigation. The reason for the Executive Session must be announced at least 14 days prior to the Executive Session, except that the chairman may convene an emergency meeting with less advance notice, in which case the reason for the Executive Session must be announced at the open meeting immediately subsequent to the Executive Session. All action taken in violation of this open meeting provision shall be null and void.

"(c) Detailed written minutes shall be kept of all meetings of the Commission. All decisions, files, records and data of the Commission, except for information privileged against introduction in judicial proceedings, personnel records and minutes of a properly convened Executive Session, shall be open to public inspection subject to a procedure that substantially conforms to the Freedom of Information Act (Public Law 89-554, 5 U.S.C. § 552) and applicable Pennsylvania law and may be copied upon request and payment of fees which shall be no higher than necessary to recover copying costs.

"(d) The Commission shall select an appropriate staff, including an Executive Director, to carry out the duties and functions assigned by the Commission. Notwithstanding any other provision of law, the Commission may hire and/or retain its own legal counsel.

"(e) Any person aggrieved by a final decision of the Commission which adversely affects the legal rights, duties or privileges of such person may petition a court of competent jurisdiction, within 60 days after the Commission's final decision, to obtain judicial review of said final decisions.

"(f) Liabilities of the Commission shall not be deemed liabilities of the party states. Members of the Commission shall not be personally liable for actions taken in their official capacity.

"(B) Powers and Duties.

"The Commission:

"(a) Shall conduct research and establish regulations to promote a reasonable reduction of volume and curie content of low-level wastes generated in the region. The regulations shall be reviewed and, if necessary, revised by the Commission at least annually.

"(b) Shall ensure, to the extent authorized by Federal law, that low-level wastes are safely disposed of within the region except that the Commission shall have no power or authority to license, regulate or otherwise develop a regional facility, such powers and authority being reserved for the host state(s) as permitted under the law.

"(c) Shall designate as "host states" any party state which generates 25 percent or more of Pennsylvania's volume or total curie content of low-level waste generated based on a comparison of averages over three successive years, as determined by the Commission. This determination shall be based on volume or total curie content, whichever is greater.

"(d) Shall ensure, to the extent authorized by Federal law, that low-level waste packages brought into the regional facility for disposal conform to applicable state and Federal regula-

tions. Low-level waste brokers or generators who violate these regulations will be subject to a fine or other penalty imposed by the Commission, including restricted access to a regional facility. The Commission may impose such fines and/or penalties in addition to any other penalty levied by the party states pursuant to Article 4(D).

"(e) Shall establish such advisory committees as it deems necessary for the purpose of advising the Commission on matters pertaining to the management and disposal of low-level waste.

"(f) May contract to accomplish its duties and effectuate its powers subject to projected available resources. No contract made by the Commission shall bind a party state.

"(g) Shall prepare contingency plans for management and disposal of low-level waste in the event any regional facility should be closed or otherwise unavailable.

"(h) Shall examine all records of operators of regional facilities pertaining to operating costs, profits or the assessment or collection of any charge, fee or surcharge and may make recommendations to the host state(s) which shall review the recommendations in accordance with its (their) own sovereign laws.

"(i) Shall have the power to sue and be sued subject to Article 2(A)(5)(e) and may seek to intervene in any administrative or judicial proceeding.

"(j) Shall assemble and make available, to the party states and to the public, information concerning low-level waste management and disposal needs, technologies, and problems.

"(k) Shall keep current and annual inventories of all generators by name and quantity of low-level waste generated within the region, based upon information provided by the party states. Inventory information shall include both volume in cubic feet and total curie content of the low-level waste and all available information on chemical composition and toxicity of such wastes.

"(l) Shall keep an inventory of all regional facilities and specialized facilities, including, but not necessarily restricted to, information on their size, capacity and location, as well as specific wastes capable of being managed, and the projected useful life of each regional facility.

"(m) Shall make and publish an annual report to the governors of the signatory party states and to the public detailing its programs, operations and finances, including copies of the annual budget and the independent audit required by this compact.

"(n) Notwithstanding any other provision of this compact to the contrary, may, with the unanimous approval of the Commission members of the host state(s), enter into temporary agreements with non-party states or other regional boards for the emergency disposal of low-level waste at the regional facility, if so authorized by law(s) of the host state(s), or other disposal facilities located in states that are not parties to this agreement.

"(o) Shall promulgate regulations, pursuant to host state law, to specifically govern and define exactly what would constitute an emergency situation and exactly what restrictions and limitations would be placed on temporary agreements.

"(p) Shall not accept any donations, grants, equipment, supplies, materials or services, conditional or otherwise, from any source, except from any Federal agency and from party states which are certified as being legal and proper under the laws of the donating party state.

"(C) Budget and Operation.

"(1) Fiscal Year—The Commission shall establish a fiscal year which conforms to the fiscal year of the Commonwealth of Pennsylvania.

"(2) Current Expense Budget—Upon legislative enactment of this compact by two party states and each year until the regional facility becomes available, the Commission shall adopt a current expense budget for its fiscal year. The budget shall include the Commission's estimated expenses for administration. Such expenses shall be allocated to the party states according to the following formula:

"Each designated initial host state will be allocated costs equal to twice the costs of the other party states, but such costs will not exceed $200,000.

"Each remaining party state will be allocated a cost of one half the cost of the initial host state, but such costs will not exceed $100,000.

"The party states will include the amounts allocated above in their respective budgets, subject to such review and approval as may be required by their respective budgetary processes. Such amounts shall be due and payable to the Commission in quarterly installments during the fiscal year.

"(3) Annual Budget Request—For continued funding of its activities, the Commission shall submit an annual budget request to each party state for funding, based upon the percentage of the region's waste generated in each state in the region, as reported in the latest available annual inventory required under Article 2(B)(k). The percentage of waste shall be based on volume of waste or total curie content as determined by the Commission.

"(4) Annual Report to Include Budget—The Commission shall prepare and include in the annual report a budget showing anticipated receipts and disbursements for the ensuing year.

"(5) Annual Independent Audit—

"(a) As soon as practicable after the closing of the fiscal year, an audit shall be made of the financial accounts of the Commission. The audit shall be made by qualified certified public accountants selected by the Commission, who have no personal direct or indirect interest in the financial affairs of the Commission or any of its officers or employees. The report of audit shall be prepared in accordance with accepted accounting practices and shall be filed with the chairman and such other officers as the Commission shall direct. Copies of the report shall be distributed to each Commission member and shall be made available for public distribution.

"(b) Each signatory party, by its duly authorized officers, shall be entitled to examine and audit at any time all of the books, documents, records, files and accounts and all other papers, things or property of the Commission. The representatives of the signatory parties shall have access to all books, documents, records, accounts, reports, files and all other papers, things or property belonging to or in use by the Commission and necessary to facilitate the audit; and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents and custodians.

"Article 3

"Rights, Responsibilities and Obligations of Party States

"(A) Regional Facilities.

"There shall be regional facilities sufficient to dispose of the low-level waste generated within the region. Each regional facility shall be capable of disposing of such low-level waste but in the form(s) required by regulations or license conditions. Specialized facilities for particular types of low-level waste management, reduction or treatment may not be developed in any party state unless they are in accordance with the laws and regulations of such state and applicable Federal laws and regulations.

"(B) Equal Access to Regional Facilities.

"Each party state shall have equal access as other party states to regional facilities located within the region and accepting low-level waste, provided, however, that the host state may close the regional facility located within its borders when necessary for public health and safety. However, a host state shall send notification to the Commission in writing within three (3) days of its action and shall, within thirty (30) working days, provide in writing the reasons for the closing.

"(C) Initial Host State.

"Pennsylvania and party states which generated 25 percent or more of the volume or curies of low-level waste generated by Pennsylvania, based on a comparison of averages over the three years 1982 through 1984, are designated as "initial host states" and are required to develop and host low-level waste sites as regional facilities. The percentage of waste from each state shall be determined by cubic foot volume or total curie content, whichever is greater.

"(D) Exemption From Being Initial Host State.

"Party states which generate less than 25 percent of the volume or curies of low-level waste generated by Pennsylvania, based on a comparison of averages over the years 1982 through 1984, shall be exempt from initial host state responsibilities. These states shall continue to be exempt as long as they generate less than 25 percent threshold over successive 3-year periods. Once a state generates an average of 25 percent or more of the volume or curies generated by Pennsylvania over a successive 3-year period, it shall be designated as a "host state" for a 30-year period by the Commission and shall immediately initiate development of a regional facility to be operational within five years. Such host state shall be prepared

to accept at its regional facility low-level waste at least equal to that generated in the state. With Commission approval, any party state may volunteer to host a regional facility. The percentage of waste from each state shall be determined by either a cubic foot volume or total curie content, whichever is greater.

"(E) Useful Life of Regional Facilities.

"Pennsylvania and other host states are obligated to develop regional facilities for the duration of this compact. All regional facilities shall be designed for at least a 30-year useful life. At the end of the facility's life, normal closure and maintenance procedures shall be initiated in accordance with the applicable requirements of the host state and the Federal Government. Each host state's obligation for operating regional facilities shall remain as long as the state continues to produce over a 3-year period 25 percent or more of the volume or curies of low-level waste generated by Pennsylvania.

"(F) Duties of Host State.

"Each host state shall:

"(a) Cause a regional facility to be sited and developed on a timely basis.

"(b) Ensure by law, consistent with applicable state and Federal law, the protection and preservation of public health, safety and environmental quality in the siting, design, development, licensure or other regulation, operation, closure, decommissioning, long-term care and the institutional control period of the regional facility within the state. To the extent authorized by Federal law, a host state may adopt more stringent laws, rules or regulations than required by Federal law.

"(c) Ensure and maintain a manifest system which documents all waste-related activities of generators, brokers, carriers and related activities of generators, brokers, carriers and operators, and establish the chain of custody of waste from its initial generation to the end of its hazardous life. Copies of all such manifests shall be submitted to the Commission on a timely basis.

"(d) Ensure that charges for disposal of low-level waste at the regional facility are sufficient to fully fund the safe disposal and perpetual care of the regional facility and that charges are assessed without discrimination as to the party state of origin.

"(e) Submit an annual report to the Commission on the status of the regional facility which contains projections of the anticipated future capacity.

"(f) Notify the Commission immediately if any exigency arises requiring the possible temporary or permanent closure of a regional facility within the state at a time earlier than was projected in the state's most recent annual report to the Commission.

"(g) Require that the institutional control period of any disposal facility be at least as long as the hazardous life, as defined in Article 1(h), of the radioactive materials that are disposed at that facility.

"(h) Prohibit the use of any shallow land burial, as defined in Article 1(r), and develop alternative means for treatment, storage and disposal of low-level waste.

"(i) Establish by law, to the extent not prohibited by Federal law, requirements for financial responsibility, including, but not limited to:

"(i) Requirements for the purchase and maintenance of adequate insurance by generators, brokers, carriers and operators of the regional facility;

"(ii) Requirements for the establishment of a long-term care fund to be funded by a fee placed on generators to pay for preventative or corrective measures of low-level waste to the regional facility; and

"(iii) Any further financial responsibility requirements that shall be submitted by generators, brokers, carriers and operators as deemed necessary by the host state.

"(G) Duties of Party State.

"Each party state:

"(a) Shall appropriate its portion of the Commission's initial and annual budgets as set out in Article 2(C) (2) and (3).

"(b) To the extent authorized by Federal law, shall develop and enforce procedures requiring low-level waste shipments originating within its borders and destined for a regional facility to conform to volume reduction, packaging and transportation requirements and regulations as well as any other requirements specified by the regional facility. Such procedures shall include, but are not limited to:

"(i) Periodic inspections of packaging and shipping practices;

"(ii) Periodic inspections of low-level waste containers while in custody of carriers; and

"(iii) Appropriate enforcement actions with respect to violations.

"(c) To the extent authorized by Federal law, shall, after receiving notification from a host state or other person that a person in a party state has violated volume reduction, packaging, shipping or transportation requirements or regulations, take appropriate action to ensure that violations do not recur. Appropriate action shall include, but is not limited to, the requirement that a bond be posted by the violator to pay the cost of repackaging at the regional facility and the requirement that future shipments be inspected. Appropriate action may also include suspension of the violator's use of the regional facility. Should such suspension be imposed, the suspension shall remain in effect until such time as the violator has, to the satisfaction of the party state imposing such suspension, complied with the appropriate requirements or regulations upon which the suspension was based and has taken appropriate action to ensure that such violation or violations do not recur.

"(d) Shall maintain a registry of all generators and quantities generated within the state.

"(H) Liability.

"In the event of liability arising from the operation of any regional facility and during and after closure of that facility, each

party state shall share in that liability in an amount equal to that state's share of the region's low-level waste disposed of at the facility. If such liability arises from negligence, malfeasance or neglect on the part of a host state or any party state, then any other host or party state(s) may make any claim allowable under law for that negligence, malfeasance or neglect. If such liability arises from a particular waste shipment or shipments to, or quantity of waste or condition at, the regional facility, then any host or party state may make any claim allowable under law for such liability. The percentage of waste shall be based on volume of waste or total curie content.

"(I) Failure of Party State to Fulfill Obligations.

"A party state which fails to fulfill its obligations, including timely funding of the Commission, may have its privileges under the Compact suspended or its membership in the Compact revoked by the Commission and be subject to any other legal and equitable remedies available to the party states.

"Article 4

"Prohibited Acts and Penalties

"(A) Prohibition.

"It shall be unlawful for any person to dispose of low-level waste within the region except at a regional facility unless authorized by the Commission.

"(B) Waste Disposed of Within Region.

"After establishment of the regional facility(s), it shall be unlawful for any person to dispose of any low-level waste within the region unless the waste was generated within the region or unless authorized to do so both by the Commission and by law of the host state in which said disposal takes place. For the purposes of this compact, waste generated within the region excludes radioactive material shipped from outside the party states to a waste management facility within the region. In determining whether to grant such authorization, the factors to be considered by the Commission shall include, but not be limited to, the following:

"(a) The impact on the health, safety and environmental quality of the citizens of the party states;

"(b) The impact of importing waste on the available capacity and projected life of the regional facility;

"(c) The availability of a regional facility appropriate for the safe disposal of the type of low-level waste involved.

"(C) Waste Generated Within Region.

"Any and all low-level waste generated within the region shall be disposed of at a regional facility, except for specific cases agreed upon by the Commission, with the affirmative votes by a majority of the Commission members of the host state(s) affected by the decision.

"(D) Liability.

"Generators, brokers and carriers of wastes, and owners and operators of sites shall be liable for their acts, omissions, conduct or relationships in accordance with all laws relating thereto. The party states shall impose a fine for any violation in an amount

equal to the present and future costs associated with correcting any harm caused by the violation and shall assess punitive fines or penalties if it is deemed necessary. In addition, the host state shall bar any person who violates host state or Federal regulations from using the regional facility until that person demonstrates to the satisfaction of the host state the ability and willingness to comply with the law.

"(E) Conflict of Interest.

"(1) Prohibitions—

"No commissioner, officer or employee shall:

"(a) Be financially interested, either directly or indirectly, in a contract, sale, purchase, lease or transfer of real or personal property to which the Commission is a party.

"(b) Solicit or accept money or any other thing of value in addition to the expenses paid to him by the Commission for services performed within the scope of his official duties.

"(c) Offer money or anything of value for or in consideration of obtaining an appointment, promotion or privilege in his employment with the Commission.

"(2) Forfeiture of Office or Employment—

"Any officer or employee who shall willfully violate any of the provisions of this section shall forfeit his office or employment.

"(3) Agreement Void—

Any contract or agreement knowingly made in contravention of this section is void.

"(4) Criminal and Civil Sanctions—

"Officers and employees of the Commission shall be subject, in addition to the provisions of this section, to such criminal and civil sanctions for misconduct in office as may be imposed by Federal law and the law of the signatory state in which such misconduct occurs.

"Article 5

"Eligibility, Entry Into Effect, Congressional Consent, Withdrawal

"(A) Eligibility.

"Only the States of Pennsylvania, West Virginia, Delaware and Maryland are eligible to become parties to this compact.

"(B) Entry into Effect.

"An eligible state may become a party state by legislative enactment of this compact or by executive order of the governor adopting this compact; provided, however, a state becoming a party state by executive order shall cease to be a party state upon adjournment of the first general session of its legislature convened thereafter, unless the legislature shall have enacted this compact before such adjournment.

"(C) Congressional Consent.

"This compact shall take effect when it has been enacted by the legislatures of Pennsylvania and one or more eligible states. However, Article 4(B) and (C) shall not take effect until Congress has consented to this compact. Every fifth year after such consent has been given, Congress may withdraw consent.

"(D) Withdrawal.

"A party state may withdraw from the compact by repealing the enactment of this compact, but no such withdrawal shall become effective until two years after enactment of the repealing legislation. If the withdrawing state is a host state, any regional facility in that state shall remain available to receive low-level waste generated within the region until five years after the effective date of the withdrawal.

"Article 6

"Construction and Severability

"(A) Construction.

"The provisions of this compact shall be broadly construed to carry out the purposes of the compact, but the sovereign powers of a party state shall not unnecessarily be infringed.

"(B) Severability.

"If any part or application of this compact is held invalid, the remainder, or its application to other situations or persons, shall not be affected.".

Passed the House of Representatives October 13, 1987.

Attest:

DONNALD K. ANDERSON,
Clerk.

By W. RAYMOND COLLEY,
Deputy Clerk.

V. SECTION-BY-SECTION ANALYSIS

Section 1

Section 1 contains the short title, the Appalachian States Low-Level Radioactive Waste Compact Consent Act

Section 2

Section 2 provides the Appalachian States Low-Level Radioactive Waste Compact set forth in section 5 is in furtherance of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021b et seq.) which permits states to enter into interstate compacts necessary to provide for the regional disposal facilities for low-level radioactive waste.

Section 3

Section 3 conditions congressional consent to the compact on certain activities being conformed to in the conduct of business of the compact. The section does not substantively affect the compact as it has been ratified by the member states. The intent of the committee is that the compact, under the authorities deriving from the compact and under the authorities of the states that are members of the compact, will act in accordance with the rules for operation of the national compact system as set forth in the Low-Level Radioactive Waste Policy Act.

Ratification of this compact would therefore be conditioned on compliance with the Low-Level Radioactive Waste Policy Act. Should the members of the Appalachian Compact not comply with

the provisions of the act, congressional consent to the compact would be null and void. The consent of Congress becomes effective upon the date of enactment of this act.

Section 4

Section 4 of H.R. 3025 is intended as a commitment that the Congress will not modify the conditions under which the compact operates until 10 years after enactment of this act.

Section 5

Section 5 grants congressional consent to the states of Delaware, Maryland, Pennsylvania, and West Virginia to enter into the Appalachian States Low-Level Radioactive Waste Compact, and to the compact adopted by each member state, in its entirety as adopted by the states and submitted for ratification by Congress. Section 5 also sets out the text of the Appalachian States Low-Level Radioactive Waste Compact.

VI. COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 7, 1987.

Hon. JOSEPH R. BIDEN, Jr.,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3025, the Appalachian States Low-Level Radioactive Waste Disposal Compact Consent Act, as ordered reported by the Senate Committee on the Judiciary, December 3, 1987. We estimate that this bill would result in no significant cost to federal, state or local governments.

Under existing law, the disposal of most commercial low-level radioactive wastes is considered a state responsibility that can be best managed on a regional basis. States are authorized to enter into compacts to provide for regional waste management, subject to Congressional consent. This bill gives the consent of the Congress to Pennsylvania, West Virginia, and any other eligible states to enter into the Appalachian States Low-Level Waste Disposal Compact. Other eligible states are defined in the Compact. Congressional consent is conditioned, however, on acceptance by the compact of certain provisions of the Low-Level Radioactive Waste Policy Act.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

EDWARD M. GRAMLICH,
Acting Director.

VII. REGULATORY IMPACT STATEMENT

Pursuant to paragraph 11(b), Rule XXVI of the Standing Rules of the Senate, the committee concludes that the act will not have any direct regulatory impact.

VIII. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the committee finds no changes in existing law caused by H.R. 3025. In granting congressional consent to the Appalachian Compact, H.R. 3025 restates existing law with regard to conditions of consent and congressional review, but existing law is not modified by these sections. The balance of the bill adds new language, but does not modify existing law.

IX. VOTE OF THE COMMITTEE

On December 3, 1987, with a quorum present, by voice vote, the Committee on the Judiciary unanimously ordered the bill (H.R. 3025) favorably reported.

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